

BILL LOCKYER, Attorney General  
of the State of California  
SALLY MAGNANI KNOX, State Bar No. 161677  
Deputy Attorney General  
California Department of Justice  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 322-1802  
Facsimile: (916) 327-2319

Attorneys for Complainant

**BEFORE THE  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
STATE OF CALIFORNIA**

In the Matter of the Enforcement Order Against:

CARLOS N. BAIREES  
(AKA CARLOS BAIREES. JR)  
dba BAIREES TRUCKING  
EPA ID # CAR000108605

Respondent.

Docket No. HWCA20040455

OAH No. N2005010098

**AMENDED**  
**ENFORCEMENT ORDER**

1.1. **Parties.** The California State Department of Toxic Substances Control (“Department”) issues this Enforcement Order (“Order”) to Carlos N. Baires Jr. D.B.A. Baires Trucking (“Respondent”).

1.2. **Site.** Respondent transports hazardous waste at the following site: 8904 Thurber Lane, Bakersfield, California (“Site”).

1.3. **Permit/Interim Status.** The Respondent does not have a state permit, or interim status to manage hazardous waste.

1.4. **Jurisdiction.** Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. **Exhibits.** All exhibits attached to this Order are incorporated herein by this reference.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3  
4  
5  
6

7  
8  
9

10  
11  
12

## 13

14  
1516  
1718  
19

20  
21  
22

25

26  
27  
28

1 advice, guidance, suggestions, or comments by the Department regarding reports, plans,  
2 specific8ations, schedules, or any other writings by Respondent shall be construed to relieve  
3 Respondent of the obligation to obtain such formal approvals as may be required.

4           **3.4. Department Review and Approval.** If the Department determines that any  
5 report, plan, schedule, or other document submitted for approval pursuant to this Order fails to  
6 comply with the Order or fails to protect public health or safety or the environment, the  
7 Department may:

8                   a. Modify the document as deemed necessary and approve the document as  
9 modified, or

10                  b. Return the document to Respondent with recommended changes and a date by  
11 which Respondent must submit to the Department a revised document incorporating the  
12 recommended changes.

13           **3.5. Compliance with Applicable Laws.** Respondent shall carry out this Order  
14 in compliance with all local, State and federal requirements, including but not limited to  
15 requirements to obtain permits and to assure worker safety.

16           **3.6. Endangerment during Implementation.** In the event that the Department  
17 determines that any circumstances or activity (whether or not pursued in compliance with this  
18 Order) are creating an imminent or substantial endangerment to the health or welfare of people  
19 on the site or in the surrounding area or to the environment, the Department may order  
20 Respondent to stop further implementation of this Order for such period of time as needed to  
21 abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order  
22 under this section shall be extended for the term of the Stop Work Order.

23           **3.7. Liability.** Nothing in this Order shall constitute or be construed as a  
24 satisfaction or release from liability for any conditions or claims arising as a result of past,  
25 current, or future operations of Respondent. Notwithstanding compliance with the terms of this  
26 Order, Respondent may be required to take further actions as are necessary to protect public  
27 health or welfare or the environment.

1                   3.8. **Site Access.** Access to the site shall be provided at all reasonable times to  
2 employees, contractors, and consultants of the Department, and any agency having jurisdiction.  
3 Nothing in this Order is intended to limit in any way the right of entry or inspection that any  
4 agency may otherwise have by operation of any law. The Department and its authorized  
5 representatives shall have the authority to enter and move freely about all property at the Site at  
6 all reasonable times for purposes including but not limited to: inspecting records, operating logs,  
7 and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms  
8 of this Order; and conducting such tests as the Department may deem necessary. Respondent  
9 shall permit such persons to inspect and copy all records, documents, and other writings,  
10 including all sampling and monitoring data, in any way pertaining to work undertaken pursuant  
11 to this Order.

12                   3.9. **Data and Document Availability.** Respondent shall permit the Department  
13 and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other  
14 data generated by Respondent or on Respondent's behalf in any way pertaining to work  
15 undertaken pursuant to this Order. Respondent shall allow the Department and its authorized  
16 representatives to take duplicates of any samples collected by Respondent pursuant to this Order.  
17 Respondent shall maintain a central depository of the data, reports, and other documents  
18 prepared pursuant to this Order. All such data, reports, and other documents shall be preserved  
19 by Respondent for a minimum of six years after the conclusion of all activities under this Order. If  
20 the Department requests that some or all of these documents be preserved for a longer period of  
21 time, Respondent shall either comply with that request, deliver the documents to the Department,  
22 or permit the Department to copy the documents prior to destruction. Respondent shall notify the  
23 Department in writing at least six months prior to destroying any documents prepared pursuant  
24 to this Order.

25                   3.10. **Government Liabilities.** The State of California shall not be liable for  
26 injuries or damages to persons or property resulting from acts or omissions by Respondent or  
27 related parties in carrying out activities pursuant to this Order, nor shall the State of California be  
28 held as a party to any contract entered into by Respondent or its agents in carrying out activities

pursuant to this Order.

3.11. **Incorporation of Plans and Reports.** All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12. **Extension Request.** If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. **Extension Approvals.** If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

#### **OTHER PROVISIONS**

4.1. **Additional Enforcement Actions.** By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. **Penalties for Noncompliance.** Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. **Parties Bound.** This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporation.

4.4. **Time Periods.** "Days" for purposes of this Order means calendar days.

#### **PENALTY**

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at ~~\$65,800~~ **36,600**. Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

1 Department of Toxic Substances Control  
2 Accounting Office  
3 1001 I Street, 21<sup>st</sup> Floor  
4 P.O. Box 806  
5 Sacramento, California 95812-0806

6 A photocopy of the check shall be sent to:

7 Charlene Williams, Chief  
8 Northern California Branch  
9 Statewide Compliance Division  
10 Department of Toxic Substances Control  
11 700 Heinz Avenue, Suite 200  
12 Berkeley, California 84710

13 **RIGHT TO A HEARING**

14 6. Respondent may request a hearing to challenge the Order. Appeal procedures  
15 are described in the attached Statement to Respondent.

16 **EFFECTIVE DATE**

17 7. This Order is final and effective twenty days from the date it is served on  
18 Respondent, unless Respondent requests a hearing within the twenty-day period.

19 Date of Issuance: April 1, 2005

20 (Original signed by Charlene Williams)  
21 Charlene Williams, Chief  
22 Northern California Branch  
23 Statewide Compliance Division  
24 Department of Toxic Substances Control  
25  
26  
27  
28